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Nos. 82-1326 and 82-1327

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES G. WATT, SECRETARY OF THE INTERIOR, *et al.*,

Petitioners,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

BRIEF OF *AMICUS CURIAE*, STATE OF NEW JERSEY

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE, STATE OF NEW JERSEY	1
SUMMARY OF ARGUMENT	3
ARGUMENT—The Ninth Circuit holding that Lease Sale 53 directly affects California's coastal zone and therefore requires the Department of Interior to perform a pre-leasing consistency determination under CZMA Section 307(c)(1) is supported by the meaning and purpose of the Act as decreed by Congress, the legislative history of the act, the longstanding interpretation of the act by its administering agency, and the judicial decisions on point	5
A. The purpose of the CZMA	7
B. The role of state coastal zone management programs and consistency requirements in carrying out the purpose of the CZMA	10
C. The meaning of Section 307(c)(1) consistency requirements	11
1. The legislative history behind consistency and lease sales	12
2. The case law on consistency and lease sales	20
CONCLUSION	21

PAGE

Table of Authorities

Cases Cited

California v. Watt, 520 F. Supp. 1359 (C.D. Cal. 1981), aff'd in part, mod. in part, 683 F.2d 1254 (9th Cir. 1982), cert. granted, 51 U.S.L.W. 3818 (May 17, 1983) 5

California v. Watt, 17 ERC 1711 (C.D. Cal. June 9, 1982) 20

Cape May Greene, Inc. v. Warren, 698 F.2d 179 (3d Cir. 1983) 20

Conservation Law Foundation v. Watt, Civil Nos. 83-0560-MA and 83-530 MA (D. Mass., March 28, 1983), appeal pending in the First Circuit, Docket No. 83-1258 20

Kean v. Watt, Civil Action No. 82-2420 (D.N.J. September 7, 1982), appeal pending in the Third Circuit, Docket No. 82-5679 ..... 3, 20

Puerto Rico v. Muskie, 507 F. Supp. 1075 (D. Puerto Rico 1981) 20

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N.J.A.C.:

7:7E-7.4(c)(1) 10

7:7E-8.2(a) 10

PAGE

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Sec. 307 13

Sec. 307(c)(1) 3, 5, 6, 11-16, 18-21

Sec. 307(c)(3) 15, 18, 19

Sec. 1451(a) 7

Sec. 1451(c) 7

Sec. 1451(f) 8

Sec. 1454(b)(8) 10

Sec. 1455(c)(8) 11

Sec. 1456(c)(1) 2, 11

Sec. 1456(c)(3) 18

43 U.S.C. (Outer Continental Shelf Lands Act ("OCSLA"):

Sec. 1345 16

Sec. 1345(a) 16

Sec. 1345(d) 16

Sec. 1866(a) 17

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37142 15

37143 15

46 Fed. Reg. (1981):

50976 15

PAGE

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House Report No. 96-1012 ..... 8, 13, 15, 19

Senate Report No. 526, 92nd Cong., 1st Sess. 30 (1971) 13

Senate Report No. 783, 96th Cong., 2d Sess. 11 (1980) 18, 19

Senate Report No. 94-277 10

Senate Report No. 96-277 18

Senate Report No. 96-783 17

1976 U.S. Code Cong. & Ad. News:

pp. 1770, 1805 18

pp. 1778-87 10

1978 U.S. Code Cong. & Ad. News:

p. 1559, n. 52 17

1980 U.S. Code Cong. & Ad. News:

p. 431 9

p. 4376 ..... 18, 19

pp. 4382-83 14

pp. 4415-18 15

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BRIEF OF *AMICUS CURIAE*, STATE OF NEW JERSEY

Interest of *Amicus Curiae*, State of New Jersey

This brief is submitted by the State of New Jersey in support of the State of California, *et al.*, respondents. The question presented for review, whether the final decision by the Department of the Interior to offer for lease a portion of the outer continental shelf ("OCS") off the coast of California for oil and gas exploration and development directly affects the coastal zone of California for purposes of Coastal Zone Management Act consistency requirements, is of vital interest to New Jersey.

New Jersey, like California, has a federally approved coastal zone management program and is located adjacent to an area of the OCS that has been and will be offered for oil and gas exploration and development leases. Pursuant to New Jersey's view of its rights under the consistency clause of the Coastal Zone Management Act ("CZMA"), 16 U.S.C. §1456(c)(1), the State has reviewed three lease sales off its coast for consistency with the New Jersey coastal management program. Those sales took place in December 1981 (Sale No. 59), August 1982 (Reoffer Sale No. 2), and April 1983 (Mid-Atlantic Offering or Sale No. 76). In its review New Jersey's principal concern has been to protect commercial and recreational uses of coastal and offshore fisheries which contribute approximately one billion dollars to the New Jersey economy.

Through consistency review New Jersey has addressed such issues as whether certain tracts should be deleted from a sale because of unreasonable risks of blowouts due to geo-hazards (certain geologically unstable tracts may be too dangerous for any oil or gas activities) or because fishery resources on particular tracts are so valuable and fragile that the harm from any oil and gas activities would outweigh the benefit of a possible find (submarine canyon head tracts with concentrations of geographically limited and vulnerable species such as tilefish, the State's leading commercial fish). New Jersey has also considered whether, for a lease sale to be consistent with the State's coastal management program, leases in areas of special biologic importance should be pre-conditioned upon requirements that lessees survey marine life prior to drilling so that their drilling plans can be designed to minimize adverse impacts to fishery resources.

In most instances New Jersey's consistency dialogue with Interior has concluded amicably in spite of Interior's posi-

tion that OCS leasing does not directly affect a state's coastal zone. However, an exception has been Reoffer Sale No. 2 ("RS-2"). Following Interior's refusal to delete seven canyon head and other vital fishery tracts from the sale and its refusal to precondition leases on another 16 tracts so as to require advance biological surveys, New Jersey brought suit in July 1982 in the United States District Court for the District of New Jersey to enjoin the leasing of 23 tracts out of the 155 offered in RS-2 which were located off the coast of the State. *Kean* v. *Watt,* Civil Action No. 82-2420. In an unreported oral decision of September 7, 1982, United States District Court Judge Dickinson R. Debevoise ruled that RS-2 would directly affect New Jersey's coastal zone and enjoined Interior from offering the 23 tracts in question until it had prepared a consistency determination as required by the CZMA. That judgment is new pending before the United States Court of Appeals for the Third Circuit under Docket No. 82-5679.

Clearly, the State of New Jersey has a paramount interest in ensuring that Interior prepare consistency determinations at the lease sale stage of the OCS oil and gas exploration process.

Summary of Argument

The Ninth Circuit correctly decided that the Department of the Interior's decision to offer certain tracts in the Santa Maria Basin for oil and gas exploration and development leasing directly affects the coastal zone of California within the meaning of CZMA Section 307(c)(1) consistency requirements. In reaching that decision the Ninth Circuit properly rejected Interior's view that an OCS lease sale does not directly affect the coastal zone because a lessee ordinarily may not engage in substantial physical activi-

ties under the lease until an exploration or other permit is received.

Instead, the Ninth Circuit held that the decision to offer for lease OCS lands does directly affect the coastal zone if the decision has a functional interrelationship from an economic, geographic or social standpoint with a state's coastal program, or if the decision initiates a series of events of coastal management consequence. That definition of "directly affecting" is in accord with any fair reading of the CZMA's language in light of the purpose of the entire act and the role of consistency in achieving that purpose. In addition, the Ninth Circuit's holding is solidly supported by the legislative history of the CZMA and by the interpretation that has been given to the act by its administering agency and by each court that has addressed the issue.

The position of Interior (and the oil and gas companies) is the characteristically headstrong and narrow view of an agency preoccupied with its primary mission—oil and gas leasing—at the expense of broader cooperative goals plainly expressed by Congress in the original 1972 version of the CZMA and strongly reiterated in the 1976 and 1980 amendments to that act. The reasonably foreseeable impacts from OCS activities on the coastal zone have been the express and studied topic of congressional action via the CZMA, and Interior's "not me" view of the duty of Federal agencies to act consistently to the maximum extent practicable with approved coastal management programs should be rejected as contrary to the intentions of Congress as set forth in the CZMA.

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ARGUMENT

The Ninth Circuit holding that Lease Sale 53 directly affects California's coastal zone and therefore requires the Department of Interior to perform a pre-leasing consistency determination under CZMA Section 307(c)(1) is supported by the meaning and purpose of the Act as decreed by Congress, the legislative history of the act, the longstanding interpretation of the act by its administering agency, and the judicial decisions on point.

The threshold question in CZMA-OCS consistency litigation has been whether a final decision by Interior to offer for lease a portion of the OCS for oil and gas exploration and development directly affects the coastal zone of an adjacent State for purposes of CZMA section 307(c)(1) consistency requirements. In the case of Lease Sale 53 it has been found that there is a 52% chance of an oilspill impacting the habitat of the sea otter; that 1.65 oil spills or more are expected during the life of the leases; that water quality will be degraded by activities such as pipelaying, drilling, chronic spills from platforms, and the discharge of sewage; that drilling muds and cuttings could significantly affect aspects of California's commercial fishery; that recreation areas could be disrupted by pipelaying; the competition for space by onshore support facilities and oilspills; that the coastal zone will experience employment and population changes; and that the gray whale could be harmed. See the opinions below, *California* v. *Watt*, 520 F. Supp. 1359, 1381 (C.D. Cal. 1981), aff'd in part, mod. in part, 683 F.2d 1254, 1260 (9th Cir. 1982), *cert.* granted, 51 *U.S.L.W.* 3818 (May 17, 1983).

It is in this setting that Interior has appealed from the ruling that CZMA consistency applies to Lease Sale 53. In

the Federal view the command of section 307(c)(1) that, "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs," does not apply because the direct effects reasonably foreseen from Lease Sale 53 cannot take place until exploratory drilling, development, or production permission is granted to a lessee by Interior. Therefore, Interior believes it need not examine the consistency of the basic decision to lease a portion of the OCS with an affected state's approved coastal management program; rather, it wants to leave consistency problems for lessee oil and gas companies to fight out with states on a tract-by-tract, plan-by-plan basis when they seek exploratory drilling or production-development approval.*

It is manifest from any fair reading of the CZMA statute in light of its purpose and the act's legislative history that Interior is wrong, seriously wrong, in its minimalist,

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* Interior and the oil and gas companies jealously seek to protect their dominance over the OCS by arguing that lease sale consistency review gives the states substantive rights that will result in endless litigation at the expense of finding new energy reserves. First, the record of OCS consistency litigation does not bear out this claim as in most instances only a few tracts out of hundreds offered have been at issue. More important, however, this argument is blind to the fact that by avoiding lease sale consistency review, consistency litigation will only be postponed until oil or gas companies apply for exploration permits. Then, instead of one suit such as California has brought regarding the 29 tracts at issue in Lease Sale 53, there is a potential for many separate suits as exploration permission is sought by different companies at different times. While advance consistency review does not preclude later litigation over specific permits, it certainly reduces that likelihood and thereby can hasten the nation's search for new fossil fuel energy sources.

hands off view of consistency. Indeed, Interior's position (and certainly the position of the oil and gas companies) is tantamount to saying that the CZMA does not apply to it, tantamount to saying that it need not cooperate with the states in carrying out their coastal management programs, and even tantamount to saying that it, as the public-trustee landlord of OCS land, can lease the land as it pleases without responsibility under the CZMA for the intended uses of the land. However, where, as here, the intended use of the land being leased can reasonably be expected to produce substantial impacts (both physical and socio-economic) upon an adjacent state's coastal zone, those substantial impacts are direct effects within the meaning of the CZMA, and the lease sale decision must be preceded by a consistency determination. The holding of the Ninth Circuit on this issue is in accord with all relevant legal principles of decision and with all judicial precedent on point, and it should be affirmed.

A. The purpose of the CZMA.

The fundamental purpose of the CZMA is to foster the "national interest in the effective management, beneficial use, protection, and development of the coastal zone." 16 U.S.C. §1451(a). The competing demands placed upon the coastal zone from, among other things, the extraction of fossil fuels was a stated concern of Congress when the CZMA was first enacted in 1972, 16 U.S.C. §1451(c), and over the years the concern expressed by Congress towards energy demands upon the coast, specifically OCS demands, has grown.

In particular, in a 1980 amendment to the CZMA Congress found that:

> "(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal,

> transportation, and industrial activities in the Great Lakes, territorial sea, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters;" 16 U.S.C. §1451(f).

The rationale for this and related amendments to the CZMA was explained by Congress in House Report No. 96-1012 as follows:

> "Additionally, as our national energy needs and the policies of the international petroleum market continue to diverge, it is clear that the frontier areas of the U.S. Outer Continental Shelf will be increasingly explored and developed for more domestic oil and gas production. The acceleration of OCS activity will have a profound impact on the coastal zone and will require, to a degree yet undetermined, further utilization of our Nation's coast for a variety of activities related to offshore development.
>
> • • •
>
> It is this rational balancing of competing pressures on finite coastal resources which was intended by the 1972 act and it is the growing awareness that such balancing will be increasingly difficult in the years ahead that argues strenuously for the reauthorization of, and the improvements made to, the CZMA contained in H.R. 6979.
>
> **The changes proposed in the bill are intended to advance the purposes of the act, without making major revisions in the requirements imposed on States. The bill recognizes the progress achieved to date by coastal States participating in the Federal coastal management program by reauthorizing the act to**

> insure that recently developed coastal zone management efforts in States and localities become fully established and accepted functions of their governments. H.R. 6979 is a progressive initiative. It seeks to institutionalize federally approved State programs that have been developed, and to foster management improvements during the new program implementation stage which are tied to new and specific national policy objectives." 1980 U.S. Code Cong. & Ad. News, p. 431.

Thus it has been clear since the inception of the CZMA that energy demands upon the coast, and in particular OCS demands, have been singled out by Congress as a special area of concern. As explained below, Congress intended the CZMA to achieve the national goal of "effective management, beneficial use, protection, and development of the coastal zone", through the broad use of state coastal zone management planning for energy impacts and through broad Federal cooperation with those plans via consistency. Interior, while it does not deny the letter of the CZMA, denies its spirit by downgrading the importance of the act to a mere bothersome distraction from its "real" mission under the Outer Continental Shelf Lands Act ("OCSLA"): leasing land. In Interior's view, and especially in the view of the oil and gas companies, the CZMA should be molded (perhaps broken) to the task of finding oil and gas. However important the goal of energy sufficiency, it does not justify the emasculation of the CZMA to achieve that end. It is Interior's operations under the OCSLA which, as explained *infra*, Congress has plainly stated should be consistent with approved coastal zone management programs.

B. The role of state coastal zone management programs and consistency requirements in carrying out the purpose of the CZMA.

The path selected by Congress to achieve sound coastal zone management and development has been to encourage states to develop coastal zone programs with the promise that the activities of Federal agencies directly affecting the coastal zone will be consistent with those programs. In specific, Congress has declared it to be national policy for states to include in their management programs an element which gives priority consideration for siting major facilities related to energy.* More particularly, in 1976 Congress made the inclusion of a planning element for OCS impacts mandatory. 16 U.S.C. §1454(b)(8) states:

> "(b) The management program for each coastal state shall include each of the following requirements:
>
> • • •
>
> (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities."

See Senate Report No. 94-277 for a discussion of the range of OCS impacts to be addressed in a state's management program. 1976 U.S. Code Cong. & Ad. News, pp. 1778-87. In a companion 1976 amendment the Secretary of Commerce (the approval authority for coastal management programs) was directed to find that:

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* New Jersey's coastal program gives priority consideration to the siting of major energy facilities by encouraging the rapid exploration of the OCS as long as no long-term adverse impacts result such as unreasonable interference with fisheries resources. New Jersey Administrative Code 7:7E-7.4(c)(1) and 8.2(a).

> "(8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program." 16 U.S.C. §1455(c)(8).

Once approval has been obtained, or once the management program includes policies which resolve the conflicts between OCS activities and a state's commercial and recreational interests in a manner compatible with national energy needs, all Federal agencies are commanded to cooperate and act consistently with that program. 16 U.S.C. §1456(c)(1).

C. The meaning of Section 307(c)(1) consistency requirements.

As shown above, Congress has declared it to be national policy and purpose for the "effective management, beneficial use, protection, and development of the coastal zone" to be achieved by state coastal program planning for OCS energy impacts. It is from this context that the meaning of "activities directly affecting the coastal zone" in section 307(c)(1) must be derived. New Jersey submits that the reasonably foreseeable impacts on the coastal zone from the intended use of an area offered for oil and gas leases are direct effects subjecting the decision to hold the lease sale to consistency requirements. New

Jersey further submits that this formulation clearly equates with the Ninth Circuit's holding.

First, it cannot be overstressed that state coastal zone programs and the weight they carry through consistency are the heart of the CZMA. The scope of Federal activities subject to section 307(c)(1) consistency is critical to achieving the congressional intentions stated in the act. To the extent that a narrow interpretation is given to consistency, to the extent that the CZMA is molded to accommodate strong willed Federal agencies preoccupied with their mission above all others, then to that extent, the fundamental purpose of the CZMA will be frustrated.

Second, the meaning that New Jersey ascribes to direct effects of a lease sale is supported by the legislative history of both the CZMA and OCSLA, is consistent with the longstanding interpretation placed upon the act by its administering agency, and is in accord with the position taken by each court that has analyzed the application of the CZMA to an OCS lease sale.

1. The legislative history behind consistency and lease sales.

The CZMA has been the subject of much congressional debate and study. Beginning in 1971 and continuing through the latest amendments to the CZMA in 1980, Congress has repeatedly taken a broad view of when a Federal agency must act consistently with an approved coastal management program. In particular, the 1971 Senate Report explained the intent of Congress concerning the federal activities which were to be subject to section 307(c)(1) as follows:

> "It is intended that any lands or waters under federal jurisdiction and control, within or adjacent

> to the coastal estuarine zone, where the administering federal agency determines them to have a *functional interrelationship from an economic, social or geographic standpoint with land and waters within the coastal estuarine zone,* should be administered consistent with approved state management programs." (Emphasis added. Senate Report No. 526, 92nd Cong., 1st Sess. 30 (1971).

In 1980, Congress reauthorized the CZMA, 94 Stat. 2060 (1980), and amended certain sections of the act, although the section 307 consistency provisions were not altered. However, at that time, Congress also recognized an uncertainty that had arisen concerning the interpretation of the threshold test of section 307(c)(1). House Report No. 96-1012. To resolve any such uncertainty, the House Report restated the 1971 formulation of the "functional interrelationship" test quoted above, and added this further clarification:

> "Generally all consistency provisions have been properly construed. The only uncertainty that has arisen concerns the interpretation of section 307(c)(1), the threshold test of 'directly affecting' the coastal zone. The committee points out that in the preamble to NOAA's Federal consistency regulations, this threshold test was considered during earlier congressional deliberations and was determined to apply whenever a Federal activity had a functional interrelationship from an economic, geographic or social standpoint with a State coastal program's land or water use policies.
>
> Under such circumstances, a State has a legitimate interest in reviewing a proposed Federal activity since the management program's policies are likely to apply to the activity. Thus, when a Federal agency

initiates a series of events of coastal management consequence, the intergovernmental coordination provisions of the Federal consistency requirements should apply.

The benefits of this system are significant. First, it fosters consultation between Federal and State agencies at the earliest practicable time. This, in turn, enhances the ability of the States to plan for and manage the coastal zone effects which are directly linked to Federal activities. It also allows Federal agencies to avoid the irretrievable commitment of resources for Federal activities likely to lead to results inconsistent with the requirements of approved State programs.

Second, broad opportunities for States to influence Federal activities enhances the incentive of the consistency provisions, thereby reinforcing voluntary State participation in the national program. Finally, an expansive interpretation of the threshold test is compatible with the amendment to section 303 calling for Federal agencies and others to participate and cooperate in carrying out the purposes of the act.

In conclusion, the Coastal Zone Management Act of 1980 seeks to reinforce and promote the progress which States have made in resolving the struggles on their coasts." 1980 U.S. Code Cong. & Ad. News, pp. 4382-83.

Congress has thus made its intention to give a broad meaning to consistency abundantly clear. The threshold test for section 307(c)(1) consistency, "directly affecting", is satisfied whenever a Federal agency initiates a series of events of coastal management consequence. As NOAA had

noted,* this test is interchangeable with the "functional interrelationship" language which was first enunciated in the 1971 congressional deliberations, see 44 *Fed. Reg.* 37143 (1979), and which Congress reiterated in 1980.**

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* NOAA, the National Oceanic and Atmospheric Agency mentioned by Congress in House Report No. 96-1012, *supra*, is the arm of the Department of Commerce that administers the CZMA. NOAA historically took the position that Federal OCS lease sale decisions require a consistency determination, 44 *Fed. Reg.* 37142 (1979); Memorandum of General Counsel, Department of Commerce, Jan. 25, 1980, reprinted in 1980 U.S. Code Cong. & Ad. News, pp. 4415-18. It is extremely significant that when NOAA in 1981 suddenly sought to reverse this long-held position and to exempt OCS lease sales from the requirements of section 307(c)(1), resolutions of disapproval were immediately introduced in both Houses of Congress. NOAA promptly withdrew its new regulation, citing the negative reaction from Congress as well as the coastal states. 46 *Fed. Reg.* 50976 (1981). NOAA has also observed that "implementation of this requirement at the OCS pre-lease sale stage should lead to minimization of adverse coastal environment and socio-economic impacts, *thereby reducing conflicts with affected states and avoiding delay in the exploitation of offshore energy resources.*" 44 *Fed. Reg.* 37142 (1979) (emphasis added). Thus, application of section 307(c)(1) at the lease sale stage may well lead to early resolution of problems rather than forcing a piecemeal and perhaps adversary resolution of conflicts with oil companies on a tract-by-tract basis under section 307(c)(3).

** Lacking support in the legislative history for its definition of "directly affecting", Interior has argued that the 1980 legislative history is after the fact and thus entitled to no weight. This argument, which is critical to Interior's position, ignores the fact that the "functional interrelationship" test is drawn from the 1971 legislative history. As explained below, the courts have properly concluded that the 1980 legislative history is entitled to substantial weight.

Faced with the obvious intent of Congress to give a broad meaning to direct effects and consistency, the Federal government, while admitting that section 307(c)(1) consistency can, in limited circumstances, apply to the decision to conduct a lease sale, in fact argues that the OCSLA amendments of 1978 and the CZMA amendments of 1976 exempt lease sales from consistency. However, the selected excerpts of legislative history cited by Interior are wide of the mark, and its view of the meaning of the 1976 CZMA amendments is wrong.

The 1978 amendments to the OCSLA do set forth a mechanism for state input into lease sale decisions. See 43 U.S.C. §1345(a). Interior argues that this is the proper route for state input into a lease sale rather than through CZMA consistency. However, while section 1345(d) allows a governor of an affected state to make recommendations as to the size, timing and location of a proposed lease sale, Interior has extremely wide latitude in deciding whether to accept the recommendations. In fact, this case readily underscores the difference in the constraints placed upon Interior by a governor's recommendations under the OCSLA and consistency under the CZMA. See the Ninth Circuit's opinion at 683 F.2d at 1268-69. There is little doubt why Interior and the oil and gas companies prefer the comfortable confines of the OCSLA for review of lease sale decisions rather than the measurement of such decisions by the "consistent to the maximum extent practicable" standard of the CZMA.

Fortunately, Congress did not implicitly or explicitly repeal the applicability of consistency to lease sales when it enacted 43 U.S.C. §1345. Rather than repudiating its long expressed concerns over OCS impacts on the coastal zone, Congress expressed its intent as follows when it enacted section 1345:

> "The committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. 1451 *et seq.*), certain OCS activities *including lease sales* and approval of development and production plans must comply with 'consistency' requirements as to costal zone management plans approved by the Secretary of Commerce. Except for specific changes made by Title IV and V of the 1977 Amendments, nothing in this act is intended to alter procedures under that Act for consistency if a State has an approved Coastal Zone Management Plan." Emphasis added. House Report No. 95-590, reprinted in 1978 U.S. Code Cong. & Ad. News, p. 1559, n. 52.

In fact, Congress formalized this intent in the savings clause of the OCSLA, 43 U.S.C. §1866(a), which specifically provides that "nothing in the Act shall be construed to amend, modify or repeal any provision of the Coastal Zone Management Act of 1972. . . ." In short, the OCSLA and its legislative history explicitly confirm that the consistency requirements of the CZMA apply to OCS lease sales and that the OCSLA was not intended to change that result.

The above statements of Congress regarding the OCSLA are also in full accord with Congressional statements on the CZMA. In particular, Senate Report No. 96-783 regarding the 1980 amendments to the CZMA states:

> "The Department of Interior's activities which *preceded lease sales* were to remain subject to the requirements of section 307(c)(1). As a result, intergovernment coordination for purposes of OCS development commences at the earliest practicable time in the opinion of the Committee, as the Department of Interior sets in motion a series of events which

> has consequences in the coastal zone. Coordination must *continue* during the critical exploration, development and production stages." Emphasis added. Senate Report No. 783, 96th Cong., 2d Sess. 11 (1980)

The 1980 House Report also specifically made mention of the "Federal agency responsibility to provide states with a consistency determination related to OCS decisions which preceded issuance of leases." House Report No. 96-1012, reprinted in 1980 U.S. Code Cong. & Ad. News, p. 4376.

These unequivocal statements from Congress in 1980 reiterates its earlier views. For example, the Senate Report accompanying its 1976 amendments to the CZMA noted that past difficulties arising from the lack of coordination between coastal states and Federal agencies prior to OCS lease sale decisions could be resolved by "[f]ull implementation of the Coastal Zone Management Act of 1972. . . ." Senate Report No. 96-277, reprinted in 1976 U.S. Code Cong. & Ad. News, p. 1770. Moreover, the Senate Report again concluded, with specific reference to Federal OCS activities, that "under the act as it presently exists . . . if the activity may affect the State coastal zone and it has an approved management program, the consistency requirements do apply." *Id.* at 1805.

Despite the overwhelming weight of legislative history against its position, Interior attempts to bolster its view that the OCSLA should be given primacy over coastal zone management consistency requirements because of 1976 amendments to another CZMA consistency provision, section 307(c)(3) (U.S.C. §1456(c)(3)).

This argument, however, is a classic mixup of apples and oranges because while section 307(c)(1) addresses Federal agency activities which directly affect the coastal zone, section 307(c)(3) applies only to *applicants* for Federal li-

censes or permits. Thus, Interior's argument that since the word "lease" was not added to section 307(c)(3) in 1976, Federal leasing activities are somehow excluded from consistency coverage under section 307(c)(1), is meaningless.

The most that can be said of the history of section 307 (c)(3) is that the *applicant* for a Federal OCS lease, unlike an applicant for other Federal licenses or permits, does not have to engage in a consistency determination in order to get the lease. But, Congress has specifically stated that while the 1976 amendments to section 307(c)(3) removed "the need to examine individual leases under the general license and permit consistency section, [t]he change did not alter federal agency responsibility to provide states with a consistency determination related to OCS decisions which preceded issuance of leases." House Report No. 96-1012, reprinted in 1980 U.S. Code Cong. & Ad. News, p. 4376; *see also* Senate Report No. 783, 96th Cong., 2d Sess. 11 (1980).

Congress' decision in 1976 on whether an applicant for a lease of a particular tract need demonstrate consistency under section 307(c)(3) is thus entirely distinct from Congress' earlier decision in section 307(c)(1) that Interior should scrutinize for consistency its decision to commit an entire portion of the OCS to oil and gas activities. Perhaps leaving the evaluation of particular exploration or development plans on specific tracts to consistency review after a lease is signed is adequate for some purposes, but such piecemeal scrutiny of the nuts and bolts of OCS activities is no substitute for taking a hard look at the consistency of the basic decision to subject a state's coastal zone to the reasonably foreseeable impacts that will likely follow a lease sale. A finger-in-the-dike, after the fact role is not all that Congress intended for State coastal zone planning. What was intended was a careful review by Interior and affected states of the big picture beforehand, an

essential of sound planning, as well as a fine-tuned review of an oil company's specific tract-by-tract plans stemming from an already consistent lease sale proceeding.

2. The case law on consistency and lease sales.

Each of the courts (including the District Court and Circuit Court of Appeals in this case) that has examined the OCS lease sale consistency controversy has concluded that a lease sale directly affects the coastal zone within the meaning of section 307(c)(1). *Conservation Law Foundation* v. *Watt,* Civil Nos. 83-0506-MA and 83-530-MA (D. Mass., March 28, 1983), appeal pending in the First Circuit, Docket No. 83-1258; *Kean* v. *Watt,* Civil Action No. 82-2420 (D.N.J. September 7, 1982), appeal pending in the Third Circuit, Docket No. 82-5679; *California* v. *Watt,* 17 ERC 1711 (C.D. Cal. June 9, 1982). The cases cited by Interior for the contrary proposition simply do not deal with lease consistency obligations under the CZMA, but instead show only that Interior has successfully parried the thorough application of certain environmental protection statutes to its activities under the OCSLA. They consequently are not controlling here where the CZMA litigation to date, whether involving OCS activities or other Federal actions, has consistently recognized the strong role intended by Congress for federally approved coastal zone programs. See the cases cited above; *Cape May Greene, Inc.* v. *Warren,* 698 F.2d 179 (3d Cir. 1983) (obligation of EPA to act consistently with state land use decisions); *Puerto Rico* v. *Muskie,* 507 F. Supp. 1075, 1060 (D. Puerto Rico 1981) (obligation of federal goverment not to use army fort inconsistently with coastal program).

The reasoning of this line of cases should be affirmed by this Court and the leadership role intended by Congress for the CZMA in the area of state-federal coastal cooperation thereby upheld.

CONCLUSION

It is respectfully submitted that this Court affirm the holding of the Ninth Circuit which requires the Department of the Interior to perform a consistency determination as provided in section 307(c)(1) of the CZMA before conducting OCS lease sales because such sales "directly affect" the coastal zones of states with approved management programs.

Respectfully submitted,

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